

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**CARL T. COLDIRON**

**Petitioner,**

**vs.**

**DEBRA TIMMERMAN-COOPER,**

**Respondent.**

**CASE NO. 3:04-CV-07750**

**JUDGE CHRISTOPHER A. BOYKO**

**ORDER**

CHRISTOPHER A. BOYKO, J:

This matter comes before the Court on Petitioner Carl T. Coldiron's Motion (ECF DKT # 42) for Reconsideration of this Court's Order denying Coldiron's Petition (ECF DKT #3) for a Writ of Habeas Corpus. For the reasons that follow, Petitioner's Motion is denied.

### **FACTUAL BACKGROUND**

Petitioner prays the Court reconsider its finding that Petitioner procedurally defaulted on his ineffective counsel claim. In the Magistrate Judge's Report and Recommendation (ECF DKT #31), the Magistrate Judge recommended this Court find Petitioner procedurally defaulted on his claim of ineffective assistance of appellate counsel in state court because Petitioner did not present the claim either on direct appeal or in his Rule 26(B) Application. Because Petitioner did not object to the Magistrate Judge's recommendation on this issue, the Court found any such objection waived and adopted the Magistrate Judge's recommendation.

### **LAW AND ANALYSIS**

As Chief Judge James G. Carr announced in *Davie v. Mitchell*, 291 F. Supp. 2d 573 (N.D. Ohio 2003): "Motions for reconsideration are disfavored, and a motion for reconsideration is unfounded unless it either calls...attention to an argument or controlling authority that was overlooked or disregarded in the original ruling, presents evidence or argument that could not previously have been submitted, or successfully points out a manifest error of fact or law." *Id.* at 634.

Petitioner's Motion does none of these things. The Motion fails to call attention to any argument or controlling authority that was overlooked or disregarded in either the Magistrate Judge's Report and Recommendation or this Court's Order adopting it. Moreover, Petitioner's arguments not only could have been submitted previously but *were submitted* prior to both the Magistrate Judge's Report and Recommendation and this Court's Order denying Petitioner's habeas petition. Finally, Petitioner's Motion fails to point out any manifest error of fact or law

relating to the Court's findings; instead, Petitioner advances, yet again, an erroneous argument already made prior to the Magistrate's Report and Recommendation.

**CONCLUSION**

Upon consideration of the arguments presented, and after a thorough examination of the facts, the Court adheres to its previous ruling denying Coldiron's Petition for a Writ of Habeas Corpus.

**IT IS SO ORDERED.**

6/19/07

**DATE**

Christopher A. Boyko

**CHRISTOPHER A. BOYKO**  
**United States District Judge**

**FILED**

**JUN 19 2007**

**CLERK OF COURTS  
U.S. DISTRICT COURT, N.D.O.  
CLEVELAND**